

A Guide
to the
City of Boston's
**Zoning Board of Appeal
Process**



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Mayor of Boston

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Commissioner
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Part One: Introduction

The City of Boston Inspectional Services Department provides assistance on obtaining the licenses and permits required for doing business, as well as building and modifying housing, in Boston. As part of Mayor Thomas M. Menino's Housing 2000 Fast Track Program (See Part Four below) the City is making the permitting process more accessible and streamlined. To this end, we developed *A Guide to the City of Boston Zoning Board of Appeal Process* to assist you throughout the permitting process and, at the same time, clarify how Boston's Zoning Code and the Appeals process helps maintain, enhance, and promote the character of our neighborhoods while discouraging inappropriate development.

A Word About Zoning

Zoning is a topic about which most people don't give a second thought. Until, that is, they wish to build an addition and the local building inspector denies them a building permit application because the proposal violates a provision of the local zoning code.

Zoning regulates the uses and dimensional boundaries (i.e. height) of privately owned buildings and land. The City of Boston Zoning Code, to a certain extent, serves the purpose of a planning board for smaller projects. It allows owners and developers to build projects as long as the proposals fall within the restrictions of the Zoning Code. For example, it may allow a homeowner to erect a small addition, but prevents an auto body shop from opening in a residential district.

The current City of Boston Zoning Code was enacted in 1964, and has been modified numerous times since. The Zoning Code revisions recognize that Boston's neighborhoods are unique. In fact, most neighborhoods outside the immediate downtown area were towns annexed over the years. There are fourteen similar neighborhood codes plus eighteen different codes for downtown and the waterfront. Zoning is in place to protect the neighborhoods from the construction of buildings or structures that do not fit into the context of a neighborhood. These structures may bring additional traffic, noise or pollution, or they may be constructed at a height that does not work for the neighborhood.



When a project does not fit the use or dimensional requirements of the Zoning Code, the Board of Appeal can grant relief from strict interpretations of the Code. Relief is granted after a public hearing and a finding that the proposed project is in harmony with the legal zoning in the neighborhood.

Part Two: Frequently Asked Questions

WHO IS THE BOARD OF APPEAL?

The Board is made up of seven professionals appointed by the Mayor for three-year terms. They meet on Tuesday mornings at 9:30 a.m. in Room 801, City Hall. Meetings currently are held twice a month, with additional meetings scheduled at various times.

WHAT DOES THE BOARD OF APPEAL DO?

The Board hears appeals for varying the application of the Zoning Code and determines when it is appropriate to grant deviations from Code restrictions. The Board may also consider a request for an interpretation of the Zoning Code or an appeal from an order or decision of the Commissioner of Boston Inspectional Services. The Board may also hear requests to grant relief from the provisions of the Massachusetts State Building Code.

WHEN DO I NEED TO APPLY FOR A HEARING BEFORE THE BOARD OF APPEAL?

If you have received a “further relief required (refusal) letter” from the Boston Inspectional Services Department, denying your application for a permit, you have 45 days to apply for a public hearing before the Board. At the hearing, you will have an opportunity to state why you believe you are in compliance with the Zoning Code and why relief should be granted.

WHERE DO I FILE THE APPEAL FORM?

File the appeal form and appropriate fees with the Cashier at the Boston Inspectional Services Department. We ask that the appeal be filed in person, or by someone representing you, so that we may check the form for accuracy and make sure it is filed within 45 days from date of the refusal letter, as the law requires.

HOW MUCH DOES IT COST FOR FILING AN APPEAL FORM?

The fee for filing the appeal form is a total of \$100 for any violations concerning residential structures of three units or less.

The fee is \$150 for each violation of the Zoning Code for all other structures.

The fee for an appeal on State Building Code violations is \$150 for each violation on all non-residential projects and residential projects of four families or more.

The fee for an appeal on State Building Code violations for a residential project of three families or less is \$100, no matter how many violations have been identified.

All fees, including State Building Code violations, must be paid to the Cashier at the Boston Inspectional Services Department at the time of filing the appeal form. Payment must be in cash, money order, Mastercard, or Visa. Personal checks are accepted.

WHICH AGENCY REVIEWS BOARD OF APPEAL APPLICATIONS?

The Boston Redevelopment Authority (BRA), the planning agency for the City, reviews all Board of Appeal applications and makes written recommendations to the Board. The BRA and the Mayor's Office of Neighborhood Services also may solicit and/or receive input from abutters and community groups and, if appropriate, will arrange meetings. A representative from these agencies attends all hearings. The Office of Business Development is available to assist businesses and commercial enterprises in their interactions with the City approval process. All of these agencies stand ready and willing to help you.

WHAT HAPPENS WHEN THE BOARD DENIES APPEALS?

If the Board denies your appeal, you must wait one year to re-file an appeal, unless the proposal is substantially changed or unless the Board dismisses it “without prejudice.” In that event, you may re-file without waiting the mandated one-year period.

Part Three: Six Steps Through the Appeals Process

The six steps in the Appeals process include:

One—Apply to the Board of Appeal

Two—Schedule a Hearing

Three—Appear at the Hearing

Four—Make a Decision Once Zoning is Approved

Five—Review State Building Code Requirements

Six—Boston Redevelopment Authority Design Review

Step One — Apply to the Board of Appeal

You may obtain appeal forms, along with detailed instructions, at Counter One at the Boston Inspectional Services Department at 1010 Massachusetts Avenue. The Department’s hours are 8:00 a.m.-5:00 p.m., Monday through Friday. You will need to submit an original document, along with the required number of copies and appropriate fee. Be sure to have the property owner’s name and signature on the appeal form. Bring a copy of your refusal letter.

If an attorney, agent, or other authorized party prepares the form, a letter of authorization **must** accompany it. (A commercial tenant may file on behalf of the owner, so long as the tenant has a letter of authorization from the owner.)

Step Two — Schedule a Hearing

Hearing dates are scheduled in the order in which the appeals are received. You may call the Board of Appeal office two weeks after you file to determine your anticipated hearing date. Dates are tentative and subject to change, pending the formal notification process.

Legal notice of the hearing and the time and place is published in the *Boston Herald* or *The Boston Globe* at least 20 days prior to the hearing date. Notice is mailed to you, as well as other persons deemed by the Board to be affected, including immediate abutters, local elected officials and community groups, as well as any party who has requested notification. By law, a hearing cannot take place until after the required notice. To facilitate this process, Mayor Menino has established a schedule of extra hearings.

Step Three — Appear at the Hearing

On the date and at the time specified in the notice sent to you, appear at the Hearing Room, Room 801, on the eighth floor of City Hall. The Board will read into the record the specifics of your particular case and you will then be called upon to present your case. You have the right to be represented by a lawyer, architect, or other professional. Be prepared with supporting evidence such as photographs, building models, tax bills, petitions signed by abutters, or any other evidence you determine relevant.

If you choose not to pursue your appeal, prior to legal advertising and notification, you should submit your request in writing to the Board so that the Board can withdraw the case, with no penalty to you.

Once notice has been published and mailed, and you choose not to continue the appeal process, present to the Board either in person or by mail a letter requesting to withdraw your case. This must be in writing and protects your right to an appeal in the future.

You cannot cancel a hearing date after it has been advertised and the abutters have been notified. You may choose to be represented by another party if you are unable to appear personally. Your agent may proceed forward with your case or request a deferral. The Board may in its discretion grant a deferral, but is not obligated to do so.

If you choose not to continue the appeal process, you may request that the Board dismisses it without prejudice, but this request must be made prior to the merits of the case being heard. This action would allow you to initiate the process again at your convenience without waiting a full year.

At the hearing, after reading the case into the record, the Board will call upon you to present your case. You should be prepared with testimony, documents, and materials as noted above. The Board will then take testimony from those in favor and then from those in opposition. You will then have the opportunity to rebut what you have heard. In most cases, the Board will make a decision on that date. On occasion, the Board will choose to defer the matter to a later date.

Step Four — Make a Decision Once Zoning is Approved

Congratulations! Now that your petition has been approved, a staff person will give you a handout advising you to go to the Board of Appeal office in Room 204 in City Hall to obtain instructions, specific to your case, on how to prepare a written decision. This is your final legal document and remains a part of the permanent record.

Once you have prepared the written decision and submitted it to the Law Department for review, the Law Department will forward it to the Board for additional review and preparation for Board signature. The Board will sign the written decision at its next meeting date. Currently, the meeting is scheduled twice a month. The actual dates can be confirmed by calling the Boston Inspectional Services Department. Once the signature process is complete, this department initiates the formal notification process, which takes approximately 15 working days. All those who were notified of the public hearing are now notified of the Board's decision in this matter.

The written decision, along with the permit application and plans, is then forwarded to the Boston Inspectional Services Department, Planning and Zoning Division. The forwarding date is commonly referred to as the "date of recording," which triggers a 20-day appeal period, during which time an appeal to the Board's decision may be taken. It generally takes two weeks from the date your decision is signed to get to the Boston Inspectional Services Department.

Step Five — Review State Building Code Requirements

You may then call 617.635.5300 to arrange an appointment with the Plans and Zoning Examiner assigned to your application, so that you may work toward actual permit issuance. Now that you have zoning approval, the examiner must review your plans for compliance with State Building Code requirements including electrical, mechanical, fire protection, structural and egress issues. Some applicants submit stamped structural and construction drawings at the time of initial zoning review. If you do that, then you have already had your Building Code review and this part of the process is a quick stop.

Step Six — Boston Redevelopment Authority Design Review

Most projects involving construction approved by the Board are subject to design review by the Boston Redevelopment Authority (BRA). Once you have received Board approval, you may contact the BRA representative at 617.722.4300 to arrange a meeting to initiate the design review process. The Board always remains the final arbiter throughout the design review process and may be notified when an impasse is reached.

In some cases, the Board may attach other conditions requesting further information (i.e., engineer's report, more specific plans, etc.) and, although the Board may have granted approval, the decision will not be signed and processed until these requirements have been satisfied.

In addition, decisions granting approval for certain uses, such as take-out restaurants or parking lots, will often include operational conditions (for example, hours of operation, placement of trash receptacles, and identifying carry-out containers with name of business).

NOTE:

Under the revised Zoning Enabling Act, the Board's decision must be filed with the Boston Inspectional Services Department within 90 days of the date of hearing. In order to meet this timeframe, you must prepare and file your decision with the Board of Appeal office. Under extenuating circumstances, and for good cause, it is possible for the Board to extend the filing date.

It is extremely important and certainly in your best interest to complete the process to the final step. The permit and/or occupancy certificate cannot be issued until all the paperwork is in place and all requirements are met. If the process is not finalized, it may be necessary in the future to initiate the entire process once again, from the very beginning!

Part Four: The Housing 2000 Permit Fast Track Program

In 1999, Mayor Thomas M. Menino initiated the Housing 2000 Permit Fast Track Program to address the City's housing crisis. This program is designed to assist people through the permitting process who wish to build new housing. Building permit applicants can take advantage of zoning clinics, seminars, caseworkers, and fast track systems to understand the zoning requirements and to speed their way through the system.

As part of the Housing 2000 Permit Fast Track process, Boston Inspectional Services has implemented a number of improvements including color-coded permits; caseworkers; expedited Board of Appeal hearings; and expedited design review. Mayor Menino has also directed the Boston Inspectional Services Department to use technology currently available to further streamline the permitting process.

Color-Coded Permits: Permits for new housing are color coded to enhance tracking progress through the expedited process. Plan examiners review fast track applications as a priority, immediately informing developers when their application packages require further information to allow a complete review.

Caseworkers: The Plans and Zoning division has assigned caseworkers to coordinate between the developers, the Department, and other City agencies to facilitate permit review.

Expedited Board of Appeal Hearings: Where Zoning Code relief is required, extra Board of Appeals hearings scheduled throughout the year reduces the waiting period for decisions.

Expedited Design Review: The Boston Inspectional Services Department, working in coordination with the BRA, has implemented a process allowing design review to occur before the Board hearing while the applicant is waiting for the public notice period to elapse. This early review allows the applicant to avoid

the process that normally occurs after the Board's decision has been sent to the Boston Inspectional Services Department, thus saving weeks of waiting.

Part Five — Conclusion

To supplement to the Housing 2000 Permit Fast Track Program, the Boston Inspectional Services Department has undertaken a number of initiatives to facilitate and expedite the review of building applications. Initiatives include the Boston Inspectional Services Department Zoning Clinic, greeters, outside seminars, and extended hours.

Boston Inspectional Services Zoning Clinic

The Boston Inspectional Services Department provides a clinic for homeowners and small businesses that have questions about the zoning approval process. The clinic takes place every Tuesday from 9:00 a.m.-12 noon at Plans and Zoning, Counter Two, Boston Inspectional Services, 1010 Massachusetts Avenue, fifth floor. Since the clinic started in May 1999, it has served an average of 30 customers each month. Translators are available if you call ahead at 635.5300 extension 1348.

The clinic creates a customer-friendly atmosphere where anybody trying to navigate through the zoning process has a one-on-one 15-minute session to discuss general or specific zoning questions. *No appointments are required for the clinics held at Boston Inspectional Services, 1010 Massachusetts Avenue, Boston.*

The Boston Inspectional Services Department also holds Zoning Clinics at the Boston Empowerment Center (BEC), 20 Hampden Street, Roxbury. The Zoning Clinic is held on the third Wednesday of the month, from 4:00 p.m. to 7:00 p.m. The clinic includes a one-on-one scheduled 20-minute session, at no cost. *Appointments are required to attend the clinic at the BEC. To schedule an appointment, call the BEC at 617.445.3413.*

Residential issues included in the Zoning Clinic include: additions, change of occupancy from one- to a two- or three-family maximum, exterior decks, roof decks, porches, swimming

pools, extension of floor area to basements and attics, fences, off-street parking, accessory structures as garages, sheds, patios, and sunrooms.

Commercial issues included in the Zoning Clinic include: increasing occupancy loads, signage, take-out restaurant use, offices, home business uses, and more.

Greeters

The Boston Inspectional Services Department has hired and trained greeters to guide customers through the permit application process and to generally refer walk-in customers to the appropriate department. The greeters are reflective of a philosophy that the Department is a service-based agency whose processes must be accessible and understandable to the customer.

Outside Seminars

The Boston Inspectional Services Department has conducted a number of seminars designed to better enable customers to understand its processes. Topics have included the housing fast track, the building permit application process, understanding life safety aspects of the building code, and helping small businesses understand the Zoning Code. These seminars have been conducted before varied audiences including neighborhood associations, contractors, the Greater Boston Real Estate Board, the Boston Bar Association, the U.S. Small Business Administration, and others. They are part of an ongoing commitment to continuing education and access.

Extended Hours

To create easier access for homeowners, and to bring the Department's hours in line with those of other City departments, the Boston Inspectional Services Department has extended its hours for obtaining building permits. Hours are Monday through Friday 8:00 a.m.-5:00 p.m.

Part Six—Contact Information

If you have any questions during the permitting process, please call and City of Boston staff will be happy to be of service to you.

Board of Appeal

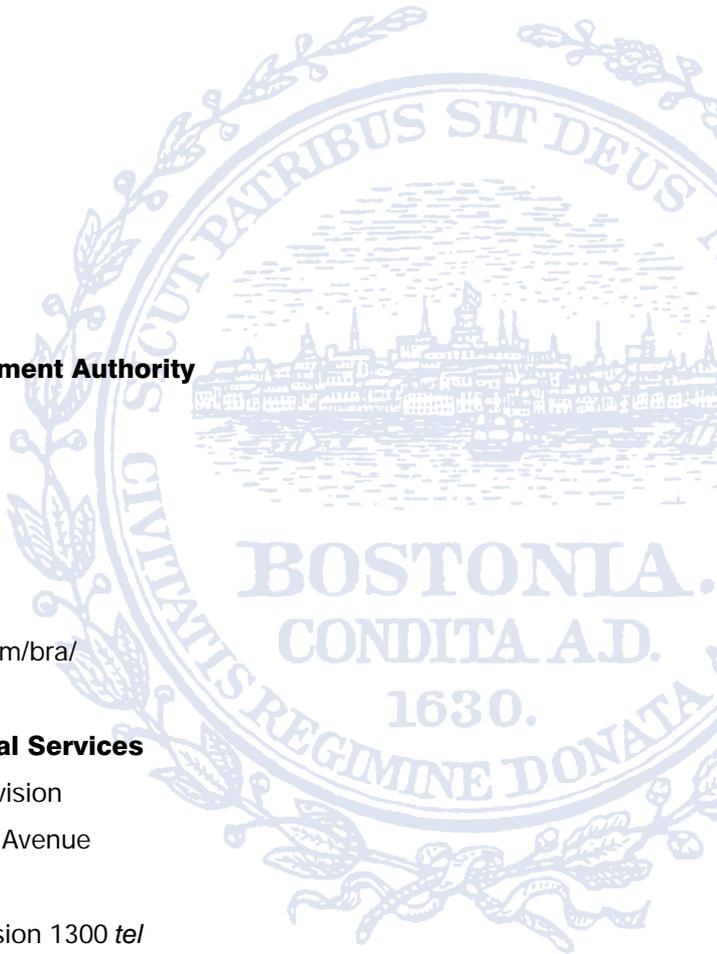
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City Hall
Boston, MA 02210
617.635.4775 *tel*
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Boston Redevelopment Authority

Room 925
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www.cityofboston.com/bra/

Boston Inspectional Services

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Boston, MA 02118
617.635.5300, extension 1300 *tel*
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